

OFFICE OF THE CHIEF OF POLICE

SPECIAL ORDER NO. 22

October 25, 2018

**SUBJECT: CERTIFICATE OF RELEASE – REVISED; AND CERTIFICATE OF RELEASE,
FORM 08.16.00 – REVISED**

PURPOSE: California Penal Code (PC) Section 851.6 requires that an arrestee who has been released from custody, under the provisions of PC Sections 849(b)(1) or 849(b)(3), and an arrestee released without an accusatory pleading filed in court, be provided with a Certificate of Release deeming the arrestee's initial arrest as a detention. This Order revises Department procedures for providing an arrestee with a Certificate of Release and enhances supervisory oversight of arrests without bookings.

Department personnel are reminded that an arrest is legally more inclusive than just a contact that results in a subsequent booking. As such, Department personnel should evaluate whether an incident resulting in actions such as an extended detention, transportation of a suspect to an Area station, or when an officer advises a suspect that he or she has been placed under arrest, is legally considered an arrest.

Note: The transportation of a subject to an Area station or other police facility is considered by the courts to be an arrest and requires probable cause.

PROCEDURE:

- I. **CERTIFICATE OF RELEASE – REVISED.** Department Manual Section 4/775.13, *Certificate of Release*, has been revised. Attached is the revised Department Manual section with the revisions indicated in italics.
- II. **CERTIFICATE OF RELEASE, FORM 08.16.00 – REVISED.** The Certificate of Release, Form 08.16.00, has been revised to permit additional supervisory oversight of arrests without bookings. The use, completion, and distribution of this form remain unchanged.

FORM AVAILABILITY: The Certificate of Release is available in E-Forms on the Department's Local Area Network. A copy of the form is attached for immediate use and duplication. All other versions of the Certificate of Release shall be marked "obsolete" and placed into the divisional recycling bin.

AMENDMENT: This Order amends Section 4/775.13 of the Department Manual.

AUDIT RESPONSIBILITY: The Commanding Officer, Audit Division, shall review this directive and determine whether an audit or inspection shall be conducted in accordance with Department Manual Section 0/080.30.



MICHEL R. MOORE
Chief of Police

Attachments

DISTRIBUTION "D"

CERTIFICATE OF RELEASE

Detention log information required only for releases without bookings:

Date/Time In	Subject's Name (Last, First, M.I.)	Charge	Arresting Officer's Name	Serial No.	Division/Unit	Watch
Date/Time Out	Detective Supervisor/Watch Commander	Serial No.	Arresting Officer's Name	Serial No.	Division/Unit	Watch

As required by the provisions of the Penal Code Section 851.6 (as amended by stats. 1975, chapter 117), I hereby certify that the taking into custody of _____ on _____ (Subject's Name) by the Los Angeles Police Department was a detention only and not an arrest. (Date)
The subject was released on _____ by the Los Angeles Police Department pursuant to the provisions of Penal Code Section 849 and Penal Code Section 849.5, pertinent portions of which appear below.

PENAL CODE SECTION 849 PROVIDES IN PART:

- (A). When an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested person shall be laid before such magistrate.
- (B). Any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever:
 - (1). He or she is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested.
 - (3). The person was arrested only for being under the influence of a controlled substance or drug and such person is delivered to a facility or hospital for treatment and no further proceedings are desirable.
- (C). Any record of arrest of a person released pursuant to paragraphs (1) and (3) of subdivision (B) shall include a record of release. Thereafter, such arrest shall not be deemed an arrest, but a detention only.

PENAL CODE SECTION 849.5 PROVIDES:

In any case in which a person is arrested and released and no accusatory pleading is filed charging them with an offense, any record of arrest of the person shall include a record of release. Thereafter, the arrest shall not be deemed an arrest, but a detention only.

IN COMPLIANCE WITH THE ABOVE SECTIONS, A COPY OF THIS CERTIFICATE WILL BE FILED WITH ANY RECORD OF THIS ARREST. THEREAFTER, THIS ARREST SHALL NOT BE DEEMED AN ARREST, BUT A DETENTION ONLY.

Arresting/Investigating/Releasing Officer (SIGNED)

TITLE

Detective Supervisor/Watch Commander (SIGNED)
(Required for Release without Booking)

TITLE

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775.13 CERTIFICATE OF RELEASE. *When issuing a Certificate of Release, Form 08.16.00, use the following procedures:*

The Certificate of Release shall be issued to:

- An arrestee (*either adult or juvenile*) who has been booked pursuant to a *Countywide Warrant System* (CWS) warrant and thereafter cleared; or,
- An adult arrestee who, at the time of release from custody, is not scheduled for a court appearance *resulting from* the arrest (*a City Attorney hearing is not a court appearance*); or,

Example: A detective reviewing an arrest report for an in-custody arrestee determines the case does not meet the filing standards for a criminal complaint. The detective authorizes release of an arrestee by teletype. The releasing employee (e.g., the detention officer) shall issue a Certificate of Release.

Example: A detective presents an arrest report for an arrestee to a prosecutor for filing consideration. The prosecutor requests the detective to conduct additional investigation before filing the case. In the interim, the detective releases the arrestee under the authority of California Penal Code (PC) Section 849(b)(1). The detective authorizes release of the arrestee by teletype. The releasing employee shall issue a Certificate of Release.

- An adult arrestee who was scheduled for a court appearance at the time of release from custody (bail, own recognizance, *Non-Traffic Notice to Appear, Form 05.02.02*, or court order) but a formal complaint was not subsequently filed. The Certificate of Release shall be issued upon establishing that a formal complaint will not be filed.

Example: An arrestee for battery is released from custody on bail or his or her own recognizance. When the case is presented to the City Attorney's Office, the prosecutor elects to hold a City Attorney hearing. The detective who presented this case for filing should issue a Certificate of Release because a formal complaint was not filed.

The Certificate of Release shall be issued at the time of release from custody. When it is not practicable to present the arrestee's copy of the Certificate of Release to him or her personally, it shall be mailed to the arrestee's last known address.

Exceptions: The Certificate of Release shall not be issued to a person arrested for California PC Section 647(f), who is released under PC Section 849(b) (2) because no further proceedings are desirable. *In addition, a supplemental booking on any warrant results in the scheduling of a court appearance, and precludes the need for a Certificate of Release.*

Note: The application of force does not necessarily mean that a person is under arrest. Officers may use non-lethal force to affect and safely maintain an investigative detention.

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Responsibility for Issuance. The Certificate of Release shall be issued as follows:

Arresting Officer's Responsibilities. When an arrestee is released prior to booking, and a Non-Traffic Notice to Appear has not been issued, the arresting officer shall issue a Certificate of Release. Any Certificate of Release issued to an arrestee prior to booking shall be approved by a detective supervisor or watch commander and shall include the pertinent information from any applicable detention log.

When the arresting officer issues the Certificate of Release, he or she shall also complete a Field Interview Report, Form 15.43.00, and place the notation, "Certificate of Release Issued," in the space provided for "Circumstance of Interview." A copy of the issued Certificate of Release shall be attached to the Adult Detention Log, Form 06.19.00; the Secure Juvenile Detention Log, Form 09.05.00; or, the Non-Secure Juvenile Detention Log, Form 09.06.00, when applicable.

Arresting officers shall include pertinent recap information and detailed comments in the incident disposition box provided on a Computer Aided Dispatch Summary Report or Daily Field Activities Report, Form 15.52.00. For arrests under the law later deemed as a detention pursuant to PC Section 851.6, comments should include the reasonable suspicion for the stop, the probable cause for the arrest, and the reason for the arrestee's release.

Concerned Investigating Officer's Responsibilities. When an investigating officer is responsible for follow-up on the arrest, he or she shall issue the Certificate of Release, if practicable. One copy shall be given to the arrestee. The original shall be attached to the Disposition of Arrest and Court Action, Form 05.09.00, and presented with the Investigator's Final Report, Form 05.10.00, for supervisory review prior to disposition.

Exception: When an investigating officer has teletyped the authorization for release of a prisoner, the Certificate of Release issuance and distribution shall be completed by the releasing employee. The investigating officer shall include a copy of the Notification of Prisoner Release Teletype with the Disposition of Arrest and Court Action and Investigator's Final Report in lieu of the Certificate of Release.

Releasing Employee's Responsibilities. If the investigating officer is not available at the time of the arrestee's release, the releasing employee shall issue the Certificate of Release. One copy shall be provided to the arrestee. The original copy shall be attached to the Jail Custody Record, Page 5, of the Los Angeles Consolidated Booking Form, Form 05.01.00.

Court Liaison Officer's Responsibilities. When no investigating officer is responsible for follow-up of the arrest, the concerned court liaison officer shall issue the Certificate of Release upon learning that a filing has been rejected. One copy shall be provided to the arrestee. The original copy shall be attached to the Arrest Disposition Report, Form 05.09.00.

Custody Services Division Watch Commander's or Watch Supervisor's Responsibilities. a Custody Services Division (CSD) watch commander or watch supervisor determines that a booked arrestee is to be released [except with the authority of PC Section 849(b)(2)j and not

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required to appear in court, the *CSD watch commander or watch supervisor* shall ensure that a *Certificate of Release has been issued*. One copy shall be *provided* to the arrestee. The original *Certificate of Release* shall be attached to the Jail Custody Record, Page 5 of the Los Angeles Consolidated Booking Form.